

FREQUENTLY ASKED QUESTIONS ON SEPARATION AND DIVORCE

Q: Do my spouse and I need a solicitor to obtain a divorce and financial settlement?

A: No, you are not required to have a solicitor but you should at least obtain initial advice from a solicitor concerning your entitlement and the procedure applicable to your circumstances. It is recommended that you instruct a specialist family solicitor for expert guidance on divorce and financial settlement as these do involve complex legal issues, and your future financial security.

Q: Can I use an online service to issue a divorce petition?

A: Yes you can, although some services simply charge for Court forms that can be downloaded from the Court website without charge. However, neither the online services nor the Court service can properly advise you as to the appropriate procedure or 'fact' of divorce that would best suit your particular circumstances.

Q: If my spouse and I agree on the arrangements for our children after separation does it need to be approved by a Court?

A: No, after separation and also after divorce you and your spouse will continue to have joint parental responsibility for your children, and unless a dispute arises as to which parent the children should live with, or how much time they should spend with each parent, no Court Order is necessary. In any application to the Court concerning children Judges resolve such disputes on the basis of what is in the best interests of your child or children.

Q: Are all assets divided equally?

A: Although equality is a 'starting point', in most marriages the appropriate order will depend upon a number of factors, including the length of the marriage; the income of both spouses and whether an equal division of capital (usually the value of the home) will be sufficient to provide a new home for both parties, in particular the parent who is the main care giver for the children.

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Q: If we are not married, how does the law decide disputes on property?

A: The legal framework is different to the law relating to married couples. If you bought your property jointly but not in specified shares, you may be able to claim more than 50% if (1) it is clear that you did not intend the property to be owned 50:50 or you changed your original intention; or (2) the Court can decide what is fair given the course of dealing throughout your ownership of the property. If you are not married, you should consider a Declaration of Trust setting out what shares you each own, if not equal.

Q: Are pensions always shared?

A: Both parties can make a claim for a Pension Sharing Order, and the joint value may be shared, particularly if built up during the course of the marriage. However, it is sometimes the case that one spouse takes a larger capital share instead of a pension share. This would depend upon the facts in such case, the value of the assets and the wishes of the parties. It is not usual or a fair and balanced settlement for one party to keep all their pension and the other party keep the all the capital.

Q: Is it necessary to go to Court for a divorce or financial settlement?

A: No, it is not necessary to attend Court if the divorce is uncontested. The terms of the divorce and draft documents should be agreed with your spouse before being issued in the Court. If you and your spouse agree the terms of the financial settlement and a Consent Order is drafted by your solicitor, this can be submitted to the Court for approval by a Judge without the need for you to attend Court. It may be necessary to attend Court if the terms of settlement can't be agreed easily. Even then, Judges will assist you and your legal team to avoid a full hearing.

Q: Do I need a solicitor if I go to mediation?

A: You are not obliged to seek the advice of a solicitor, but it is better for you to have advice before starting the mediation process, and throughout the mediation process if you wish to do so. After conclusion of mediation you will need to instruct a solicitor to draft the legal documentation.

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Q: I have heard about 'collaborative law' which sounds a good idea. Can you tell me more?

A: The collaborative practice enables clients to find solutions without conflict. A financial settlement is reached in a series of joint meetings between both spouses and their collaborative trained lawyers, working together as a team to achieve a fair settlement. Neither party may issue an application in the Court. TWM has a team of highly trained collaborative lawyers who can represent you and support you through this process.

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